Break Out Session 1: U.S. Government and Company Reporting on Social Risks

Various government agencies produce reports that businesses use to evaluate their supply chains and assess social risks, including human rights, in markets around the world. The main reports are the State Department's annual Human Rights Reports and Trafficking in Persons Report, and the Department of Labor's three reports related to child labor (Findings on the Worst forms of Child Labor, List of Goods Produced by Child Labor or Forced Labor, and the Executive Order 13126 List of Products). Conversely, under the Dodd-Frank Act the U.S. government requires financial reports to be submitted by extractive companies relating to their efforts to address conflict mineral challenges in the DRC and reports outlining human rights risks in Burma and what each company is doing to mitigate those risks. A number of other governments, and the EU, are considering human rights and other ESG reporting requirements and frameworks.

The discussion focused on how these U.S. government reports are prepared and disseminated, how they are used by companies and other stakeholders, and the extent to which they help companies assess and address the human rights challenges they face in their core business operations. Participants were asked to discuss ways to improve the reporting process and its outputs. For example, how can the private sector's own due diligence and reporting efforts inform government reports to make them stronger and more useful in improving human rights performance in specific business sectors and in different countries? To what extent is information to which the government has access useful to companies in their efforts to assess human rights and environmental risks? How might these reports best be disseminated through separate means? How can the U.S. government and other stakeholders work to ensure that these various reporting frameworks are developed and implemented efficiently and effectively on a global scale?

Facilitators: Karen Hanrahan (USG), Mike Posner (NYU Stern CBHR), Melike Yetken (USG)

Participants: Anthony Ewing (Columbia Law School), Nick Lauda (Center for the Study of Social Justice), Michelle Guelbart (ECPAT-USA), Sharon Kelly McBride (Human Rights First), Amol Mehra (ICAR), Peter Micek (Access), Taier Perlman (Access), Jenik Radon (Radon Offices), Melissa Shute (Conoco Phillips), Rachel Spence (USCIB), Scott Zdrazil (Amalgamated Bank)

Rapporteurs: Jodi Chao, Rachel Hurnyak

Overview: The session focused both on company reporting requirements (i.e. Dodd-Frank Sections 1502 & 1504 on conflict minerals in the DRC, Burma Responsible Investment Reporting Requirement), and on reports produced by USG (Country Reports on Human Rights Practices, Trafficking in Persons Report, DOL's International Child Labor and Forced Labor

Reports), and opportunities for the NAP present recommendations for modifying or strengthening these reporting avenues.

Current Reporting & Gaps

Some stakeholders favor the imposition of more mandatory reporting by companies on human rights issues. At the same time they see challenges, including current legislative efforts to repeal Dodd-Frank Sections 1502 & 1504 and the potentially temporary nature of reporting requirements for Burma which are tied to sanctions that may be lifted in the future. A further obstacle is the current attitude at the SEC towards human rights disclosures, social risk reporting and difficulty in persuading it to change its approach because of its status as an independent agency. To bring the SEC to the table, in the context of the NAP, will require further consideration by the Executive Branch and a plan for engaging the SEC in an appropriate manner.

Alternative agencies to explore for managing reporting requirements were proposed, including Customs & Borders and Commerce, in order to drive more coherence in reporting and enforcement. Though these other avenues might work well for commodities it will be challenging to apply them to other industries. There also is the potential for building a social risk component into existing reporting requirements like the Management Discussion & Analysis within the 10-K filing of publicly traded companies.

Civil society stakeholders also noted other concerns, such as the general non-responsiveness of companies to existing reporting requirements, and the lack of government enforcement when they fail to report or do so inadequately. They also commented in the very uneven quality of company auditing. Several participants commented on the need to strike the right balance between mandatory requirements and voluntary guidelines. Other participants stressed the need for specificity in reporting and greater clarity about what is expected by due diligence requirements. Yet others stressed the need to provide greater transparency and reporting about human rights challenges at the subcontractor level. Several participants suggested looking to international reporting models relating to the UN Global Compact and the UN Global Reporting Initiative as possible templates. Others suggested the need for greater clarity in the substantive standards underlying the reporting requirements that need to be developed for relevant service providers like accountants, and lawyers.

A business representative noted that private companies use USG reports when looking at new markets – typically as part of political risk considerations. In addition to making more companies aware of these reports as resources, several participants urged maximizing the role that US embassies can play for companies operating or going to market internationally and for the local community (stakeholder outreach, grievance mechanism, etc.). One starting point for this could be connecting US embassies with regional working groups of the UN Global Compact.

Another participant noted that while there is no specific reporting USG commitment on anti-corruption, there is significant high-level political will around creating more transparency domestically and combating bribery/corruption abroad, a commitment which is incorporated in US law under the FCPA. The NAP provides a great opportunity to foster inter-agency discussion and creative thinking around these issues.

Incentivizing Best Practice – “Race to the Top”

Several participants voiced the view that the USG has the opportunity to encourage a “race to the top” by using its soft power in convening and highlighting positive examples of reporting. If reporting is viewed as a means of embedding human rights thinking into company norms and communicating a company’s best efforts, the USG could identify companies who excel in each area and publicly encourage other companies to follow suit consistent with industry specific standards and guidelines. The USG has great convening power and should not underestimate it’s impact in driving best practice, disseminating information, and in facilitating industry specific conversations among companies. Another suggestion was for the USG to help specific industries develop substantive standards and guidelines and then to capitalize on the “brand value” of the USG logo or a .gov web address.in helping to promote these standards and guidelines.

Several of the participants expressed the view that the NAP offers the opportunity to bolster country, sector, and issue-specific reporting –which it needs to do in order to accommodate the wide array of issues and challenges in various industries.